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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. (C) No. 571/2006

APPELLANT CLAIMANT	Churaman Lal Rao,
	Vs.
RESPONDENTS NON-APPLICANTS	Nanku Ram & Others

POST FOR JUDGMENT ON 20 JULY 2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. (C) No. 571/2006

APPELLANT CLAIMANT

Churaman Lal Rao, aged about 43 years, S/o. Jhumuk Lal Rao, resident of Shikaripara, Balod, Tahsil Balod, District Durg (C.G)

Vs.

RESPONDENTS NON-APPLICANTS

1. Nanku Ram, S/o. Phul Singh Vishwakarma, aged about 35 years, Occupation Driver, Resident of Village Hirapur Tahsil Balod, Distt. Durg (CG)

(DRIVER)

2. Bhushan Lal Tiwari, S/o. Tukaram Tiwari, Resident of Village Payla, Tahsil Gunderdehi, District. Durg (C.G.)

(OWNER)

3. The New India Insurance Co. Ltd., Through the Branch Manager, Divisional Branch Office, Bhilai, District Durg (C.G.)

(INSURANCE COMPANY)

Shri Vishnu Koshta, counsel for the appellant.
Shri Saurabh Sharma, counsel for respondent No. 3.

J U D G M E N T
20.07.2007

Dhirendra Mishra, J.

The appellant/claimant has preferred this appeal against the award dated 23rd November, 2006 passed by learned Additional Motor Accident Claims Tribunal, Balod Distt. Durg (C.G.) in Claim Case No. 26/2005 whereby the petition of the appellant for compensation towards the injuries sustained by him in the motor vehicle accident dated 5.11.2004 involving motor cycle owned by appellant and tractor bearing registration No. C.G. 05/ZG/0235 driven by Nanku Ram has been rejected.

claim petition with a finding that the claimant has failed to prove that respondent Nanku Ram, while driving the tractor rashly and negligently dashed with the motor cycle of the appellant. However the other issues i.e. the appellant sustained grievous injuries resulting in permanent disability; at the relevant time, the tractor was driven by Nanku Ram under the instructions of its owner Bhushan Lal, have been decided in the affirmative and it has been further held that the tractor was not being driven in breach of policy condition and the appellant is not entitled to recover any compensation as the accident did not occur as a result of negligent driving of tractor by Nanku Ram/respondent No.1 but the accident occurred because of negligence on the part of the claimant himself as a result of slip.

Learned counsel for the appellant submits that the finding of the tribunal that the claimant has failed to prove that he sustained injuries because the tractor dashed against the motor cycle, is based on improper appreciation of overall evidence available on record. The appellant has examined himself, his brother Yashwant as also two treating doctors. However, the version of the claimant has not been accepted on frivolous grounds such as delay in lodging the First Information Report, the fact that the motor cycle was not damaged from the rear side in the accident as claimed by the appellant etc.

On the other hand learned counsel for the respondent No.1 submitted that the inference drawn by the claims tribunal that the appellant did not sustain injuries as a result of accident involving the tractor owned by respondent No.2, is based on proper appreciation of the evidence adduced by the claimant, driver and the owner of the tractor and the same does not call for interference.

I have heard learned counsel for the parties.

I have perused the documentary and oral evidence available on record as also the impugned award.

I have perused the documentary and oral evidence available on record as also the impugned award.

Learned claims tribunal while dealing with the Issue No. 1 in para 6 to 15 of the award, has rejected the contention of the claimant that the respondent No. 1 while driving the tractor rashly and negligently dashed against his motor cycle from the rear side as a result of which he sustained permanent disability on following grounds:-

i) In the claim petition as also in his statement before the Court it has been stated by the claimant that his motor cycle was dashed from the rear side as a result of which carrier, dickey & mudguard were broken. The police got the vehicle examined by Vishnu-mechanic and he has also stated that after the accident, his vehicle did not dash against other vehicle, tree etc. and fell over embankment constructed for stopping the flow of river. On the other hand, Yashwant A.W.-2 has stated that he went to the place of incident immediately after the accident and saw that the motor cycle was dashed from the front side and it was not dashed from the rear side and from the condition of the motor cycle it appeared that any object has dashed against the motor cycle on its front side and the rear side was marginally damaged. There was no sign that the motor cycle was dashed from the rear side.

ii) The document of Ex.D-4 filed and proved by respondent No. 1 driver, is the report given by mechanic Vishnu who examined the motor cycle at the instance of police and in which it has been reported that there was damage in the front side of the motor cycle but the damage of the rear mud guard has not been mentioned. On the basis of this analysis, the tribunal has held that the account given by the non-applicant

No.1 Nanku Ram that the accident occurred because the appellant was driving the motor cycle rashly and negligently and tried to overtake the tractor and slipped and fell down appears to be probable.

iii) The version of Nanku Ram also finds support from the diary statement of Ex.D-6 of Dr. Balram Sahu which mentions that the appellant himself told that he fell down because his motor cycle slipped and since it was not medico legal therefore the police was not informed by the said doctor.

After appreciating the evidence in detail the tribunal has also observed that the accident occurred on 5.11.2004 and the appellant remained hospitalized upto 17.11.2004. Particularly the statement of Dr. Kalyan Sahu of Gayitri Hospital who has been examined by the appellant as A.W.-3, has stated that the appellant was admitted in the hospital from 5.11.2004 to 17.11.2004 and the tribunal has held that the appellant remained hospitalized from 5.11.2004 to 17.11.2004.The appellant and his brother Yashwant A.W.-2 have claimed that they have lodged the report on 18.11.2004 in the police station and they have also stated that a receipt of the report was given by the police, however no receipt has been filed and the report of the incident was lodged only on 9.2.2005. Though, witness Yashwant, brother of the appellant, has claimed that the report was lodged in the police station after the treatment, but on the basis of the above evidence the tribunal has inferred that the report on 09.02.2005 with a false explanation that the claimant was undergoing treatment in the Gayitri Hospital from where he was discharged on 5.02.2005 and only after his plaster was taken out, he lodged report on 9th of February 2005.

Thus, the grounds on which the tribunal has held that the appellant failed to prove that he sustained injuries because his motor cycle was dashed by the tractor driven by Nanku Ram is

not worth reliance and has accepted the version of Nanku Ram-driver of the tractor that the motorcycle did not dash with his tractor and the appellant fell down as he was himself rashly and negligently driving the motor cycle which slipped, is based on evidence available on record and the same does not call for interference.

In the result, there is no substance in the appeal. The appeal deserves to be dismissed and is accordingly dismissed. No orders as to costs.

Sd/-
Dhirendra Mishra
Judge